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John Carter

PJ. 1

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189843

DATE: December 16, 1977

MATTER OF: J. W. Bateson Company, Inc.

DIGEST:

1. Bid signed by officer of one member company of a joint venture as "vice-president" is a bid by the joint venture where all participants in the joint venture are shown as partners and signature is by party named as attorney in fact for joint venture.
2. Powers of attorney, although strictly construed, should be given construction which will give effect to intent of parties.
3. Evidence required to establish the authority of a particular person to bind a corporation is for the determination of the contracting officer.
4. Absence on bond of dates of bid and bid bond and date of certificate of surety's power of attorney is waivable informality since Government is adequately protected by bond which correctly identifies solicitation and principal and which is executed by secretary of surety and corporate seal is affixed.

J. W. Bateson Company, Inc. (Bateson), protests the award by the Army Corps of Engineers of a contract to a joint venture composed of Morrison-Knudsen, Inc.; Fischbach and Moore, Inc.; and the American Bridge Division of the United States Steel Corporation under invitation for bids (IFB) No. DACA01-77-B-0025 issued on May 5, 1977, for the construction of an aeropropulsion test facility at the Arnold Engineering Development Center, Tennessee. Bids were opened on August 4, 1977. The Morrison-Knudsen joint venture was the low bidder; Bateson, in a joint venture with the Centex Corporation, was the second low bidder. Bateson contends that the bid of the Morrison-Knudsen joint venture was nonresponsive for the following reasons:

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- "1. It is impossible to determine in whose name the bid was submitted.
- "2. All purported members of the joint venture did not sign (the) bid form.
- "3. Bid Bond not dated.
- "4. Date not inserted under bid identification of bid bond.
- "5. Certificate of surety's power of attorney not dated."

Bateson's first two grounds for protest pertain to the manner of signature on the bid of the Morrison-Knudsen joint venture. In this connection, the joint venture's bid contained a power of attorney signed by officials of each of the joint venturers nominating Keith M. Price, a vice president of Morrison-Knudsen, as attorney-in-fact for the joint venture to execute a proposal incident to this solicitation and, in the event of award of the contract, to execute the contract and any necessary related undertakings. The signature blocks on the bid appear as follows:

Name of bidder Morrison-Knudsen Company, Inc.	Full Name of All Partners: Morrison-Knudsen Company, Inc.
Business Address: 400 Broadway Boise, Idaho 83729	Fischbach and Moore, Inc.
By: (Signature in Ink) Keith M. Price (handwritten)	American Bridge, Division of United States Steel Corporation
Title: Vice-President	

Bateson contends that it is impossible to tell from this signature whether the bid was submitted by the joint venture or by just Morrison-Knudsen, Inc. Bateson points particularly to the fact that Mr. Price signed as "Vice-President" rather than "attorney-in-fact."

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Bateson also argues that even if the bid is determined to have been submitted on behalf of the joint venture, it still should have been rejected since it was not signed by all of the joint venturers, citing in support of this proposition the rejection in an earlier procurement of a Bateson bid on behalf of a joint venture.

The initial question for determination concerns the effect of Mr. Price's signature as "Vice-President" and whether it is sufficient to bind the joint venturers. While it may be stated as a general rule that a power of attorney must be strictly construed and strictly followed by an agent in the exercise of his authority, it is equally important that the purpose of the parties be kept in mind and that construction adopted which will give effect to the intent of the parties. Holladay v. Daily, 86 U.S. (19 Wall.) 606 (1873); Very v. Levy, 54 U.S. (13 How.) 345 (1851); LeRoy v. Beard, 49 U.S. (8 How.) 451 (1850).

We think it clear that it was the intent of the joint venturers and Mr. Price that they should be bound by his signature on the bid documents. We note particularly that the power of attorney accompanying the bid was executed by officials of each of the joint venturers and specifically authorized Mr. Price to execute the bid on behalf of the joint venture. Mr. Price, in so doing, listed each of the members of the joint venture as partners in the undertaking both in the signature blocks and on the face of the bid form. We note also that the power of attorney did not require that Mr. Price's signatory authority be exercised in the name of the joint venture. Cf. United States v. Ferguson, 409 F. Supp. 393 (S.D. Ga. 1975). We conclude, therefore, that the bid was submitted on behalf of the joint venture and that each member of the joint venture is obligated thereby.

Regarding Bateson's contentions concerning the absence of signatures on the bid by each of the members of the joint venture, we know of no requirement that all members of a joint venture sign a bid and we have only limited knowledge of the circumstances pertaining to the previous rejection of Bateson's bid on another procurement. We offer no opinion regarding the propriety of the prior rejection and are of the opinion that our determination above governs the present matter.

Bateson also has contested the sufficiency of the power of attorney submitted with the joint venture's bid because it lacks the corporate seals of two of the three parties. We note, however, that the power of attorney is accompanied by notarized statements attesting to the identity and position of the signatories.

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We have held that the evidence required to establish the authority of a particular person to bind a corporation is for the determination of the contracting officer. See General Ship and Engine Works, Inc., 55 Comp. Gen. 422, 426 (1975), 75-2 CPD 269; Atlantic Maintenance Company, 54 Comp. Gen. 684, 692 (1975), 75-1 CPD 108. On the record before us, we conclude that the contracting officer acted reasonably in determining that Mr. Price had the authority to bind all members of the Morrison-Knudsen joint venture.

With regard to Bateson's arguments concerning the joint venture's bid bond, neither the absence of a date on a bid bond, the failure to insert a date under the bid identification on the bond, nor the lack of a date on the certificate of the surety's power of attorney is necessarily fatal to a bid. We are of the view that a bidder's failure to comply with the exact requirements relating to bid bonds does not require rejection if the surety would be liable on the bond notwithstanding the bidder's deviation. The question in such cases is "whether the government obtains the same protection in all material aspects under the bond actually submitted as it would under a bond complying completely with the instructions on Standard Form 24. B-152589, October 18, 1963." General Ship and Engine Works, Inc., supra.

The bond here correctly identifies the solicitation by number, identifies the joint venture as principal, and is signed by an officer of each of the members of the joint venture; the power of attorney accompanying the bid bond carries the signature of the assistant secretary of the surety and its corporate seal. In these circumstances, we think that the liability of the surety on the bond is clear and the deficiencies noted by Bateson are waivable minor informalities.

In view of the foregoing, the protest is denied.

Deputy

R. G. K. H.
Comptroller General
of the United States